THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.9749 of 1999

Dated: 04.04.2007

Between:

Birada Somaraju S/o late Tataiah and others.

..... PETITIONERS

And

The Commissioner of Tribal Welfare,
Government of Andhra pradesh,
Secretariat Buildings, Hyderabad and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.9749 of 1999

ORDER:

This writ petition is filed seeking a Mandamus declaring the show cause notice dated 18.03.1999 issued by the second respondent as illegal, arbitrary and contrary to Rule 9 of the Andhra Pradesh (Scheduled Caste, Scheduled Tribe and Backward Classes) Regulation of Issue of Community Nativity and Date of Birth Certificate Rules, 1977 (for short "the Rules).

Petitioners claim that they belong to Kondakapu community, which is a listed Schedule Tribe Community under the Presidential Order. The school records of petitioners 1 to 4 allegedly show that they belong to Kondakapu Community. While so, in the year 1986, some of the nemeses of the petitioners lodged frivolous complaint against the

petitioners stating that the petitioners belong to Kapu community, but not Kondakapu community. Based on the said complaint, the then Sub-Collector, Rampachodavaram issued a show cause notice dated 18.09.1987 calling upon the petitioners to explain as to why the community certificates issued to them cannot be cancelled. Questioning the same, petitioners filed W.P.No.3944 of 1989 and this Court by an order dated 13.01.1997 disposed of the same observing that as per G.O.Ms.No.282 Social Welfare (J2) Department, dated 19.12.1998, the Sub-Collector is not competent to initiate action for cancellation of the community certificates and accordingly directed that till individual action is taken by the competent authority against the petitioners, the show cause notice dated 18.09.1987 shall be kept in abeyance.

Subsequently, the second respondent issued a show cause notice dated 18.03.1999 directing the petitioners to offer their explanation as to why the community certificates issued to them shall not be cancelled. Now the contention of the petitioners is that under Rule 9 of the Rules, on receipt of a complaint against any individual disputing his caste, the District Collector has to refer the matter to the Joint Collector-cum-Chairman of the Scrutiny Committee, who, in turn, has to enquire into the matter and submit report to the District Collector, and based on such report only the District collector has to initiate action for cancellation of such certificate. But, in the instant case, no such procedure is followed, and straightaway the impugned show cause notice is issued. Hence, this writ petition.

A counter is filed on behalf of respondents 2 and 3 stating that as per the directions of this Court in W.P.No.3944 of 1989, the impugned show cause notice was issued to the petitioners, and without submitting any explanation, they filed the instant writ petition. It is further stated that as per the discreet enquiries made by the Sub-Collector,

Rampachodavaram, it was revealed that the petitioners belong to Kapu Community, but not Konda Kapu Community, and if any complaint is received disputing the caste of any individual, it is the duty of the revenue authorities to enquire into the matter. In that view of the matter, the impugned show cause notice has been issued. It is also stated that the matter was not referred to the Joint Collector in view of the directions of this Court in W.P.No.3944 of 1989 to follow the terms of G.O.Ms.No.282 dated 19.12.1986, and therefore, the impugned show cause notice has been issued directly. Therefore, no prejudice is caused to the petitioners.

Heard the learned counsel for the petitioners and the learned Government Pleader for Social Welfare.

The main contention of the learned counsel for the petitioners is that as per Rule 9 of the Rules, upon receipt of any complaint disputing the community of any individual, the matter has to be referred to the District level scrutiny committee and if in the enquiry the allegations made against such individual are proved, show cause notice has to be issued to him asking him to submit his explanation. But no such procedure is followed in the instant case and as such, the show cause notice is contrary to Rule 9 of the Rules, and the same is liable to be set aside.

Per contra, the learned Government Pleader for Social Welfare contended that as per the directions of this Court in W.P.No.3944 of 1989, the impugned show cause notice has been issued, and there is no illegality in issuing the same.

In the light of the rival contentions, it is pertinent to refer to a judgment of this Court in ***J.anuradha v. Government of Andhra***

Pradesh, Social Welfare Department[1], wherein it was held that if the District Collector is of the opinion that any individual obtained community certificate fraudulently, he shall follow the procedure provided under Section 5(1) of Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993, (for short "the Act") and Rules 8, 9 and 19 of the Rules. The relevant portion in the said judgment is extracted as under:

> "A reading of the show cause notice shows that after receiving a complaint from the President of the ECIL SC and ST Employees' Rights Protection Society, Hyderabad, the second respondent did not refer the same to the District Scrutiny Committee constituted as per Rule 8 of the A.P. Scheduled Castes, Scheduled Tribes and Backward Classes, Issue of Community , Nativity and Date of Birth Certificate Rules 1977 (hereinafter called as 'the rules'). A reading of the provisions of the A.P. (SC, ST and BC) Regulation of Issue of Community Certificates Act, 1993 (hereinafter called the Act) and the Rules shows that though the Collector is empowered to cancel the community certificate, if he is of the opinion that the said Certificate was obtained fraudulently as per the proviso to sub-section (1) of Section 5 of the Act, an inquiry is required to be conducted in accordance with the Act and the Rules. The Rules provide for the method and manner of conducting the inquiry. As per Rules 9 and 18 of the Rules, this has to be done. Such issuance of the show cause notice of cancellation without any inquiry suffers from jurisdictional errors. Therefore, the said show cause notice is liable to be set aside."

In view of the observations made in the said judgment, this Court is of the view that the impugned show cause notice was issued without following the procedure under the Act and the Rules, and the same is liable to be dismissed.

Accordingly, the writ petition is allowed setting aside the impugned show cause notice dated 18.03.1999. However, the respondents are

directed to follow the procedure contemplated under Rule 9 of the Rules for taking necessary steps on the complaint received against the petitioners. There shall be no order as to costs.

04.04.2007

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[1] 2000(5) ALT 592